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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------|
| 10/643,056   | 08/18/2003  | Richard Diana        | PTCC120378                    | 4162             |
| 26389 7590 04/17/2007<br>CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC<br>1420 FIFTH AVENUE<br>SUITE 2800<br>SEATTLE, WA 98101-2347 |             |                      | EXAMINER<br>DEMILLE, DANTON D |                  |
|  |             |                      | ART UNIT<br>3771              | PAPER NUMBER     |
| SHORTENED STATUTORY PERIOD OF RESPONSE   |             | MAIL DATE            | DELIVERY MODE                 |                  |
| 3 MONTHS   |             | 04/17/2007           | PAPER                         |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/643,056

Applicant(s)

DIANA, RICHARD

Examiner

Danton DeMille

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-35 and 37-43 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 18-20, 25, 26, 32, 34, 35 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 7-17, 21-24, 27-31, 33 and 37-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**Claims 1, 7, 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Conti.**

Conti teaches inner and outer flexible panels made of waterproof material with an inlet 8 at the distal end and an outlet 9 at the proximal end. A pump, column 2, line 68, is taught to provide the flow of fluid within the bladder. The fluid includes “inert liquids which may be heated and/or cooled” column 3, lines 48-50. The pump is operable to provide liquid under pressure to the inlet port and to receive the liquid from the outlet port. The bladder further comprises a plurality of interior seal lines figure 6, 27, oriented to direct liquid flow proximally to generally align with the direction of the user’s lymph flow. Conti teaches “this invention relates to a device having a structure designed to stimulate the blood or lymphatic flow in the lower or upper limbs of an animal” column 1, lines 6-9.

**Claims 8-15, 33, 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti in view of Copeland et al.**

Conti appears silent with regard to the details of a system to control the temperature of the liquid. Copeland is cited to teach such a convention. It would have been obvious to one of ordinary skill in the art to modify Conti to provide a conventional refrigeration and heat system that controls the temperature and flow as taught by Copeland in order to adjust the temperature as desired or required.

**Claims 16, 17, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti in view of Ruscigno.**

Ruscigno discloses a therapeutic pad that comprises a heater as well as pulsed fluid delivery to a bladder (see abstract, col. 1 ln 69). It would have been obvious to one of ordinary skill at the time the invention was made to modify Conti to provide pulsed fluid delivery as taught by Ruscigno to improve circulation and create muscle relaxation.

**Claims 21, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti in view of Kelly et al.**

Kelly teaches spot welds 50 to provide optimal fluid flow patterns within the bladder, column 4, lines 30-33. It would have been obvious to one of ordinary skill at the time the invention was made to modify Conti to provide spot welds as taught by Kelly wherever desired or require to provide optimal fluid flow patterns within the bladder. Regarding claim 21, the spot welds as taught by Kelly would inherently restrain the inner and outer panel from separating each other by more than 1 inch. In addition, the plurality of fasteners 27 are provided to prevent the bladder from excessive expansion. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conti in view of Goldsmith.**

Goldsmith teaches a therapeutic pad that comprises a bladder that is filled with fluid that is a water and isopropyl alcohol mixture (col. 6 lns. 10-16). Although the reference is silent in regards to the actual proportions of the mixture, it would have been obvious to vary the proportions of the mixture to 80% water and 20% isopropyl alcohol since a change in proportion is generally recognized as being within the level of ordinary skill in the art. *In re Reese*, 129

USPQ 402. It would have been obvious to one of ordinary skill in the art to further modify Conti to include isopropyl alcohol as taught by Goldsmith to prevent the water from freezing.

**Claims 28, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti in view of Mason et al.**

While Conti may not teach an outer wrap, Mason teaches the option to include an outer wrap of cushioning material such as cloth or foam, column 2, lines 46-48. It would have been obvious to one of ordinary skill in the art to modify Conti to include an outer wrap as taught by Mason to protect the user and to protect the bladder.

**Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 28 and further in view of Kelly et al.**

Kelly teaches spot welds 50 to provide optimal fluid flow patterns within the bladder, column 4, lines 30-33. It would have been obvious to one of ordinary skill at the time the invention was made to modify Conti to provide spot welds as taught by Kelly wherever desired or require to provide optimal fluid flow patterns within the bladder.

**Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 39 above, and further in view of Ruscigno.**

Ruscigno discloses a therapeutic pad that comprises a heater as well as pulsed fluid delivery to a bladder (see abstract, col. 1 ln 69). It would have been obvious to one of ordinary skill at the time the invention was made to further modify Conti to provide pulsed fluid delivery as taught by Ruscigno to improve circulation and create muscle relaxation.

**Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 33 and further in view of Goldsmith.**

Goldsmith teaches a therapeutic pad that comprises a bladder that is filled with fluid that is a water and isopropyl alcohol mixture (col. 6 lns. 10-16). Although the reference is silent in regards to the actual proportions of the mixture, it would have been obvious to vary the proportions of the mixture to 80% water and 20% isopropyl alcohol since a change in proportion is generally recognized as being within the level of ordinary skill in the art. *In re Reese*, 129 USPQ 402. It would have been obvious to one of ordinary skill in the art to further modify Conti to include isopropyl alcohol as taught by Goldsmith to prevent the water from freezing.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3771

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

14 April 2007



Danton DeMille  
Primary Examiner  
Art Unit 3771